

# MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 20, 1976

To George E. Sullivan, M.D., Secretary Dept. Board of Examiners for Physical Therapy
From David Roseman, Assistant Dept. Attorney General
Subject Practice of Massage

Based upon an inquiry received by the Board of Examiners for Physical Therapy, you have asked our Office whether the statutes regulating physical therapy and physical therapists, 32 M.R.S.A. §§ 3001 3108, apply to "the practice of massage by a masseur."

32 M.R.S.A. § 3001(3) state in applicable part that:

"Physical therapy' means the treatment of any bodily or mental condition of any person by the use of physical, chemical and other properties of heat or cold, light, water, electricity, massage, therapeutic exercise and physical rehabilitation procedures." (emphasis added)

The statute requires that a person be licensed by the Board of Examiners for Physical Therapy to practice physical therapy, and the qualifications necessary to obtain that license are set out therein. See 32 M.R.S.A. §§ 3101, 3102, 3106. It is our opinion that if a masseur engages in the practice of massage for "the treatment of any bodily or mental condition," the statutes referred to above regulating physical therapy and physical therapists would apply. The above statutes would not, however, apply if a masseur engaging in the practice of massage confines himself to the particular sphere of labor of a masseur.

In Louisiana State Board of Medical Examiners v. Martindale, 83 So.2d 544 (Court of Appeal of Louisiana, 1955), the court stated that:

"Massage is defined in Webster's 20th Century dictionary as a 'system of remedial treatment consisting of kneading or rubbing the body.' The courts which have passed upon the question have consistently held a masseur does not violate a statute requiring a license or certificate to practice medicine where he confines himself to the particular sphere of labor of a masseur; but the rule is otherwise where he undertakes to treat disease for pay and in doing so uses means not customarily used by a masseur in his particular sphere of labor." (emphasis added) 83 So. 2d at 545.

Although the precise issue before the court in Louisiana State Board v. Martindale, supra, involved the practice of medicine, the reasoning of the court similarly applies to the question you have raised involving physical therapists.<sup>1/</sup> See also 70 CJS Physicians and Surgeons § 10(4) "Massage."

In accordance with the foregoing, whether or not the statutes regulating physical therapy and physical therapists apply in a particular instance to the practice of massage by a masseur is a question of fact to be determined on a case by case basis. It should also be noted that no opinion is being expressed herein regarding the applicability of other statutes or ordinances to the practice of massage in this State, and that this opinion should not be considered as approval for conduct which may otherwise be unlawful.

If we may be of further assistance to you, please do not hesitate to contact this Office.

  
DAVID ROSEMAN  
Assistant Attorney General

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<sup>1/</sup> As another example of the issue of the practice of massage as it relates to the various health fields, the Maine Legislature has specifically stated that, as regards the regulation of chiropractors (32 M.R.S.A. Chapter 9), the chapter does not ". . . apply to masseurs in their particular sphere of labor who publicly represents themselves as such." See 32 M.R.S.A. § 453.